

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

GETZELL JOHNSON MURRELL, SR.,))	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-12-0635-F
)	
JODY UPTON, et al.,)	
)	
Respondents.)	

ORDER

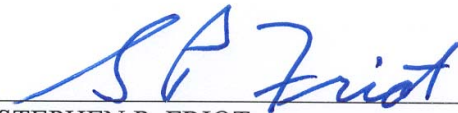
Magistrate Judge Bana Roberts filed a Report and Recommendation, doc. no. 11 (the Report), recommending that the court deny the motion to proceed *in forma pauperis*. Doc. no. 3. The Magistrate Judge's Report recommended that this court order this action dismissed without prejudice unless petitioner pays the full \$350.00 filing fee within twenty days of the date of this order. Petitioner has objected to the Report. All objected to matters are reviewed *de novo*.¹

Upon review, the court finds that there is no need for further analysis of the issues presented by petitioner's objections. The Report of Magistrate Judge Roberts is **ACCEPTED, ADOPTED** and **AFFIRMED**. The motion for *in forma*

¹One of petitioner's objections is his contention that the court should be required to list the three prior cases it depends upon to apply the "three strikes" provision of § 1915(g). Petitioner, however, waived this ground by failing to raise it in his response filed with the magistrate judge. Doc. no. 10, filed in response to the magistrate judge's order at doc. no. 9. *See, United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001) (theories raised for first time in objections to the magistrate judge's report are deemed waived). (The court notes that the magistrate judge cited a Fifth Circuit determination regarding three prior strikes against Mr. Murrell. Doc. no. 9, p. 1. *And see Getzell Murrell, Sr. v. Carl Casterline*, No. 12-30642, letter of June 20, 2012 to appellant from Fifth Circuit Court of Appeals Office of the Clerk, regarding three strikes.)

pauperis status is **DENIED**. Petitioner is **DIRECTED** to pay the \$350.00 filing fee within twenty-one days of the date of this order. Absent payment of the fee or a showing of good cause for the failure to do so, this action will be dismissed without prejudice.

Dated this 18th day of September, 2012.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

12-0635p001.wpd